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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA

UNITED STATES OF AMERICA,

Plaintiff,

v.

GARY C. HINKLE and JUDITH A. HINKLE,

Defendants.

No. A05-0111 CV (RRB)

**CERCLA CONSENT DECREE FOR SETTLEMENT OF RESPONSE
COSTS AND CIVIL PENALTY CLAIMS ASSOCIATED WITH
THE RIVER TERRACE RV PARK SITE**

I. BACKGROUND

A. On May 19, 2005, the United States of America ("United States"), on behalf of the Administrator of the United States Environmental Protection Agency ("EPA"), filed a complaint in this matter pursuant to Section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. § 9607, as amended ("CERCLA"), seeking reimbursement from Gary C. Hinkle and Judith A. Hinkle ("the Hinkles" or the "Defendants") of response costs incurred by the United States in connection with the release of hazardous substances at the River Terrace RV Park Site located in Soldotna, Alaska (the "Site"). The complaint also sought a civil penalty pursuant to Sections 122(l) and 109(c) of CERCLA, 42 U.S.C. §§ 9622(l) and 9609(c), for Defendants' alleged failure to comply with the terms of an administrative order on consent issued by EPA for performance by Defendants of a removal action at the Site and reimbursement by Defendants of response costs incurred by the United States in connection with that removal action.

B. Defendants do not admit any liability to the United States arising out of the transactions or occurrences alleged in the complaint.

C. EPA does not expect to incur additional response costs associated with the release of hazardous substances at the Site.

D. The United States and the Hinkles agree, and this Court by entering this Consent Decree finds, that this Consent Decree has been negotiated by the Parties in good faith, that settlement of this matter will avoid prolonged and potentially complicated litigation between the Parties, and that this Consent Decree is fair, reasonable, and in the public interest.

NOW, THEREFORE, with the consent of the Parties to this Decree, it is hereby ordered, adjudged, and decreed:

II. JURISDICTION

1. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331, 1345, and 1355, and pursuant to 42 U.S.C. §§ 9607 and 9613(b). The Court has personal jurisdiction over Defendants, and venue is proper in this district. The Defendants shall not challenge

the terms of this Consent Decree or this Court's jurisdiction to enter and enforce this Consent Decree.

III. PARTIES BOUND

2. This Consent Decree is binding upon the United States and the Hinkles and upon their successors and assigns. Any change in ownership, including, but not limited to, any transfer of assets or real or personal property, shall in no way alter the status or responsibilities of the Hinkles under this Consent Decree.

IV. DEFINITIONS

3. Unless otherwise expressly provided herein, terms used in this Consent Decree that are defined in CERCLA or in regulations promulgated under CERCLA shall have the meanings assigned to them in CERCLA or in such regulations. Whenever terms listed below are used in this Consent Decree or in any appendix attached hereto, the following definitions shall apply:

a. "AOC" shall mean the Administrative Order On Consent For Removal Action pertaining to the River Terrace RV Park Site issued by EPA, Docket No. 10-97-0139-CERCLA, on September 2, 1997, as amended, which appears as Appendix A to this Consent Decree.

b. "CERCLA" shall mean the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. § 9601, *et seq.*

c. "Consent Decree" shall mean this Consent Decree and any appendices. In the event of conflict between this Consent Decree and any appendix, the Consent Decree shall control.

d. "Day" shall mean a calendar day. In computing any period of time under this Consent Decree, where the last day would fall on a Saturday, Sunday, or federal holiday, the period shall run until the close of business of the next working day.

e. "Defendants" shall mean Gary C. Hinkle and Judith A. Hinkle.

f. "DOJ" shall mean the United States Department of Justice and any successor departments, agencies or instrumentalities of the United States.

g. "EPA" shall mean the United States Environmental Protection Agency and any successor departments, agencies or instrumentalities of the United States.

h. "EPA Hazardous Substance Superfund" shall mean the Hazardous Substance Superfund established by the Internal Revenue Code, 26 U.S.C. § 9507.

i. "Interest" shall mean interest at the rate specified for interest on investments of the EPA Hazardous Substance Superfund established by 26 U.S.C. § 9507, compounded annually on October 1 of each year, in accordance with 42 U.S.C. § 9607(a). The applicable rate of interest shall be the rate in effect at the time the interest accrues. The rate of interest is subject to change on October 1 of each year.

j. "Paragraph" shall mean a portion of this Consent Decree identified by an Arabic numeral or an upper or lower case letter.

k. "Parties" shall mean the United States and Defendants.

l. "Past Response Costs" shall mean all costs, including but not limited to direct and indirect costs, associated with the removal action described in the AOC that EPA or DOJ on behalf of EPA has paid at or in connection with the Site through September 30, 2005, plus accrued Interest on all such costs through that date.

m. "Section" shall mean a portion of this Consent Decree identified by a Roman numeral.

n. "Site" shall mean the River Terrace RV Park Site, encompassing approximately ten acres, located along the north bank of the Kenai River in Soldotna, Alaska at 44761 Sterling Highway in Section 32, Township 5N, Range 10W of the Seward Meridian in the Kenai Peninsula Borough. This Site is depicted in maps contained in the AOC that appears as Appendix A of this Consent Decree.

o. "United States" shall mean the United States of America, including its departments, agencies and instrumentalities.

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V. PAYMENTS TO BE MADE BY DEFENDANTS

4. RESPONSE COSTS

a. Within ten Days of entry of this Consent Decree, Defendants shall pay to EPA two hundred forty-one thousand dollars (\$241,000.00), plus an additional sum for Interest on that amount calculated from November 30, 2005 through the date of payment. Payment shall be made by FedWire Electronic Funds Transfer ("EFT") to the DOJ account in accordance with instructions provided by the Financial Litigation Unit of the Office of the United States Attorney for the District of Alaska following lodging of this Consent Decree.

b. At the time of payment, Defendants shall also send notice that payment has been made to EPA and DOJ at the addresses below. Said notice shall refer to EPA Site Identification Number 104D, U.S.A.O. file number 2005Z00196\001, DOJ case number 90-11-3-07377, and Civil Action No. A05-0111 CV (RRB).

Chief, Environmental Enforcement Section
Environmental Enforcement Section
Environment & Natural Resources Division
United States Department of Justice
P.O. Box 7611 Ben Franklin Station
Washington, D.C. 20044-7611

Edward Kowalski
Regional Counsel
U.S.E.P.A. Region 10
1200 Sixth Avenue
M/S ORC-158
Seattle, Washington 98101

c. The total amount to be paid by the Settling Defendants pursuant to this Section shall be deposited in the EPA Hazardous Substance Superfund.

5. CIVIL PENALTY

a. Within ten Days of entry by the Court of this Consent Decree, Defendants shall pay to the United States a civil penalty in the amount of seven thousand five hundred dollars (\$7,500.00). Payment shall be by EFT to the DOJ account in accordance with instructions provided by the Financial Litigation Unit of the Office of the United States Attorney for the District of Alaska following lodging of this Consent Decree. The EFT documents shall refer to U.S.A.O. file number 2005Z00196\001, DOJ case number 90-11-3-07377, and Civil Action No. A05-0111 CV (RRB). Payments by EFT must be received at the DOJ lockbox bank by 4:00 p.m. (Eastern time) to be credited on that day.

b. Copies of the payment and transmittal documents shall be mailed to the persons identified above in Paragraph 4.

VI. FAILURE TO COMPLY WITH PAYMENT OBLIGATIONS

6. INTEREST

a. If Defendants fail to make the payment required by Paragraph 4 by the date it is due, Interest shall continue to accrue on the unpaid balance through the date of payment.

b. If Defendants fail to make the payment required by Paragraph 5, interest shall accrue on the unpaid balance in accordance with 28 U.S.C. § 1961 through the date of payment.

7. STIPULATED PENALTIES

a. Nonpayment of Response Costs

1). If the amount due under Paragraph 4 (Response Costs) is not paid by the required date, Defendants shall be in violation of this Consent Decree and shall pay to EPA, as a stipulated penalty, in addition to the Interest required by Paragraph 7.a., one thousand dollars (\$1,000.00) per day that such payment is late.

2). Stipulated penalties are due and payable within 30 days of the date of the demand for payment of the penalties by EPA. All payments to EPA under this Paragraph shall be identified as "stipulated penalties" and shall be made by certified or cashier's check made payable to "EPA Hazardous Substance Superfund." The check, or a letter accompanying the check, shall reference the name and address of the Party or Parties making payment, the River Terrace RV Park Site, EPA Site Identification Number 104D, DOJ Case Number 90-11-3-07377, and Civil Action No. A05-0111 CV (RRB). Defendants shall send the check (and any accompanying letter) to:

Mellon Bank
EPA Region 10 Superfund
P.O. Box 371099M
Pittsburgh, Pennsylvania 15251

3). At the time of each payment, Defendants shall also send notice that payment has been made to the EPA and DOJ personnel identified in Paragraph 4. Such notice shall include the same references as are required in Paragraph 7.a.2).

b. Nonpayment of Civil Penalty

1). If the amount due under Paragraph 5 (Civil Penalty) is not paid by the required date, Defendants shall be in violation of this Consent Decree and shall pay to the United States, as a stipulated penalty, in addition to the interest required by Paragraph 6.b., the amount of one hundred dollars (\$100.00) per day for each day that the civil penalty remains unpaid.

2). Stipulated penalties shall be paid and notice of payment provided in the same manner as that set forth in Paragraph 5 above for payment of the civil penalty and notice thereof.

c. Penalties shall accrue as provided in this Paragraph regardless of whether EPA has notified Defendants of the violation or made a demand for payment, but need only be paid upon demand. All penalties shall begin to accrue on the day after payment is due and shall continue to accrue through the date of payment. Nothing herein shall prevent the simultaneous accrual of separate penalties for separate violations of this Consent Decree.

d. Notwithstanding any other provision of this Section, the United States may, in its unreviewable discretion, waive payment of any portion of the stipulated penalties that have accrued pursuant to this Consent Decree. Payment of stipulated penalties shall not excuse Defendants from their obligations to make the payments required by Section V or from performance of any other requirements of this Consent Decree.

8. GENERAL

a. The obligations of Defendants to pay amounts owed the United States under this Consent Decree are joint and several.

b. Payment of the civil penalty required by Paragraph 5 and payment of any stipulated penalties pursuant to Paragraph 7 are not deductible by Defendants or either of them or by any other person for federal, state, or local tax purposes.

c. Payments made under this Section shall be in addition to any other remedies or sanctions available to the United States by virtue of Defendants' failure to comply with the requirements of this Consent Decree.

d. If the United States brings an action to enforce this Consent Decree, Defendants shall reimburse the United States for all costs of such action, including but not limited to costs of attorney time.

VII. COVENANT NOT TO SUE BY UNITED STATES

9. Except as specifically provided in Section VIII below, the United States covenants not to sue or to take administrative action against Defendants pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), to recover Past Response Costs. This covenant not to sue shall take effect upon receipt by EPA of the payments required by Section V and any amounts due under Section VI. This covenant not to sue is conditioned upon the satisfactory performance by Defendants of their obligations under this Consent Decree. This covenant not to sue extends only to Defendants and does not extend to any other person.

VIII. RESERVATIONS OF RIGHTS BY UNITED STATES

10. The United States reserves, and this Consent Decree is without prejudice to, all rights against Defendants with respect to all matters not expressly included within the United States' covenant not to sue. Notwithstanding any other provision of this Consent Decree, the United States reserves all rights against Defendants with respect to:

- (a) claims based on a failure by Defendants to meet a requirement of this Consent Decree;
- (b) liability for costs incurred or to be incurred by the United States that are not within the definition of Past Response Costs;
- (c) liability for injunctive relief or administrative order enforcement under Section 106 of CERCLA, 42 U.S.C. § 9606;
- (d) liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessments; and
- (e) criminal liability.

This reservation of rights supersedes the reservation of rights appearing in Section XI of the AOC.

IX. COVENANT NOT TO SUE BY DEFENDANTS

11. Defendants covenant not to sue and agree not to assert any claims or causes of action against the United States or its contractors or employees, with respect to Past Response Costs or this Consent Decree, including but not limited to:

a. any direct or indirect claim for reimbursement from the Hazardous Substance Superfund based on Sections 106(b)(2), 107, 111, 112, or 113 of CERCLA, 42 U.S.C. §§ 9606(b)(2), 9607, 9611, 9612, or 9613, or any other provision of law;

b. any claim arising out of the response actions at the Site for which the Past Response Costs were incurred, including any claim under the United States Constitution, the Constitution of the State of Alaska, the Tucker Act, 28 U.S.C. § 1491, the Equal Access to Justice Act, 28 U.S.C. § 2412, as amended, or at common law; or

c. any claim against the United States pursuant to Sections 107 and 113 of CERCLA, 42 U.S.C. §§ 9607 and 9613, relating to Past Response Costs.

12. Nothing in this Consent Decree shall be deemed to constitute approval or preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, or 40 C.F.R. 300.700(d).

X. EFFECT OF SETTLEMENT

13. Nothing in this Consent Decree shall be construed to create any rights in, or grant any cause of action to, any person not a Party to this Consent Decree. Each of the Parties expressly reserves any and all rights (including, but not limited to, any right to contribution), defenses, claims, demands, and causes of action which each Party may have with respect to any matter, transaction, or occurrence relating in any way to the Site against any person not a Party hereto.

14. The Parties agree, and by entering this Consent Decree this Court finds, that Defendants are entitled, as of the date of entry of this Decree, to protection from contribution actions or claims as provided by CERCLA § 113(f)(2), 42 U.S.C. § 9613(f)(2), for matters addressed in this Consent Decree. For the purpose of this Paragraph, the "matters addressed" in this Consent Decree are Past

Response Costs, as that term is defined in Section IV above.

15. Defendants agree that, with respect to any suit or claim for contribution brought by them for matters related to this Consent Decree, they will notify the United States in writing no later than 60 days prior to the initiation of such suit or claim.

16. Defendants also agree that with respect to any suit or claim for contribution brought against them for matters related to this Consent Decree, they will notify in writing the United States within 10 days of service of the complaint on it. In addition, Defendants shall notify the United States within 10 days of service or receipt of any Motion for Summary Judgment and within 10 days of receipt of any order from a court setting a case for trial.

17. In any subsequent administrative or judicial proceeding initiated by the United States for injunctive relief, recovery of response costs, or other relief relating to the Site, Defendants shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, *res judicata*, collateral estoppel, issue preclusion, claim-splitting, or other defenses based upon any contention that the claims raised by the United States in the subsequent proceeding were or should have been brought in the instant case; provided, however, that nothing in this Paragraph affects the enforceability of the Covenant Not to Sue by United States appearing in Section VII above.

18. Upon receipt by EPA of all payments required by Section V (Payments To Be Made By Defendants) and any amounts due under Section VI (Failure To Comply With Payment Obligations), the removal action at the Site that is the subject of the AOC shall be deemed complete. The Covenant Not to Sue set forth in Section VII above shall supersede the covenant not to sue appearing in section XIII of the AOC.

XI. RETENTION OF JURISDICTION

19. This Court shall retain jurisdiction over this matter for the purpose of interpreting and enforcing the terms of this Consent Decree.

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XII. INTEGRATION/APPENDICES

20. This Consent Decree constitutes the final, complete and exclusive agreement and understanding among the Parties with respect to the settlement embodied in this Consent Decree. The Parties acknowledge that there are no representations, agreements or understandings relating to the settlement other than those expressly contained in this Consent Decree.

XIII. LODGING AND OPPORTUNITY FOR PUBLIC COMMENT

21. This Consent Decree shall be lodged with the Court for a period of not less than thirty (30) days for public notice and comment. The United States reserves the right to withdraw or withhold its consent if the comments regarding the Consent Decree disclose facts or considerations which indicate that this Consent Decree is inappropriate, improper, or inadequate. Defendants consent to the entry of this Consent Decree without further notice.

22. If, for any reason this Court should decline to approve this Consent Decree in the form presented, this agreement is voidable at the sole discretion of any Party and the terms of the agreement may not be used as evidence in any litigation between the Parties.

XIV. SIGNATORIES

23. Gary C. Hinkle, Judith A. Hinkle, and the Deputy Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division, United States Department of Justice each certifies that he or she is authorized to enter into the terms and conditions of this Consent Decree and to execute and bind legally such Party to this document.

24. This Consent Decree may be executed in any number of counterparts and by any combination of the signing entities in separate counterparts, each of which counterparts shall be deemed to be an original and all of which taken together shall constitute one and the same Consent Decree.

25. Each Defendant hereby agrees not to oppose entry of this Consent Decree by this Court or to challenge any provision of this Consent Decree, unless the United States has notified Defendants in writing that it no longer supports entry of the Consent Decree.

XV. FINAL JUDGMENT

26. Upon approval and entry of this Consent Decree by the Court, this Consent Decree shall constitute a final judgment between and among the United States and the Defendants. The Court finds that there is no just reason for delay and therefore enters this judgment as a final judgment under Fed. R. Civ. P. 54 and 58.

IT IS SO ORDERED THIS _____ DAY OF _____, 2005.

HONORABLE RALPH R. BEISTLINE
United States District Judge

THE UNDERSIGNED PARTY enters into this Consent Decree in *United States v. Gary C. Hinkle and Judith A. Hinkle*, No. A05-0111 CV (RRB) (D. Alaska), relating to the River Terrace RV Park Site in Soldotna, Alaska.

FOR THE UNITED STATES OF AMERICA

Date: November 11, 2005

Catherine R. McCabe
CATHERINE R. McCABE
Deputy Section Chief
Environmental Enforcement Section
Environment & Natural Resources Division
U.S. Department of Justice
Washington, D.C. 20044-7611

Date: 10 November 2005

Regina R. Belt
REGINA R. BELT
Trial Attorney
Environmental Enforcement Section
Environment & Natural Resources Division
U.S. Department of Justice
805 B Street, Suite 504
Anchorage, Alaska 99501-3657

Date: _____

Daniel D. Opalski
DANIEL D. OPALSKI
Director, Office of Environmental Cleanup
U.S. Environmental Protection Agency –
Region 10
1200 Sixth Avenue
Seattle, Washington 98101

THE UNDERSIGNED PARTY enters into this Consent Decree in *United States v. Gary C. Hinkle and Judith A. Hinkle*, No. A05-0111 CV (RRB) (D. Alaska), relating to the River Terrace RV Park Site in Soldotna, Alaska.

FOR THE UNITED STATES OF AMERICA

Date: _____

CATHERINE R. McCABE
Deputy Section Chief
Environmental Enforcement Section
Environment & Natural Resources Division
U.S. Department of Justice
Washington, D.C. 20044-7611

Date: 10 November 2005

REGINA R. BELT
Trial Attorney
Environmental Enforcement Section
Environment & Natural Resources Division
U.S. Department of Justice
805 B Street, Suite 504
Anchorage, Alaska 99501-3657

Date: _____

DANIEL D. OPALSKI
Director, Office of Environmental Cleanup
U.S. Environmental Protection Agency –
Region 10
1200 Sixth Avenue
Seattle, Washington 98101

THE UNDERSIGNED PARTY enters into this Consent Decree in *United States v. Gary C. Hinkle and Judith A. Hinkle*, No. A05-0111 CV (RRB) (D. Alaska), relating to the River Terrace RV Park Site in Soldotna, Alaska.

FOR THE UNITED STATES OF AMERICA

Date: _____

CATHERINE R. McCABE
Deputy Section Chief
Environmental Enforcement Section
Environment & Natural Resources Division
U.S. Department of Justice
Washington, D.C. 20044-7611

Date: _____

REGINA R. BELT
Trial Attorney
Environmental Enforcement Section
Environment & Natural Resources Division
U.S. Department of Justice
805 B Street, Suite 504
Anchorage, Alaska 99501-3657

Date: 11/18/05

DANIEL D. OPALSKI
Director, Office of Environmental Cleanup
U.S. Environmental Protection Agency –
Region 10
1200 Sixth Avenue
Seattle, Washington 98101

THE UNDERSIGNED PARTIES enters into this Consent Decree in *United States v. Gary C. Hinkle and Judith A. Hinkle*, No. A05-0111 CV (RRB) (D. Alaska), relating to the River Terrace RV Park Site in Soldotna, Alaska.

FOR DEFENDANT GARY C. HINKLE

~~GARY C. HINKLE~~
P.O. Box 322
Soldotna, Alaska 99669

FOR DEFENDANT JUDITH A. HINKLE

~~JUDITH A. HINKLE~~
P.O. Box 322
Soldotna, Alaska 99669

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HEARINGS CLERK
EPA--REGION 10

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 10

IN THE MATTER OF:

River Terrace RV Park
Soldotna, Alaska

Gary and Judith Hinkle,
Respondents.

ADMINISTRATIVE ORDER ON
CONSENT FOR REMOVAL ACTION

U.S. EPA, Region 10

Docket No. 10-97-0139-CERCLA

Proceeding Under Sections 104,
106(a), 107, and 122 of the
Comprehensive Environmental
Response, Compensation, and
Liability Act, as amended,
42 U.S.C. §§ 9604, 9606(a),
9607, and 9622

River Terrace Order on Consent
For Removal Response Activities - Page 1

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I. JURISDICTION AND GENERAL PROVISIONS

1. This Administrative Order on Consent ("Order") is issued under the authority vested in the President of the United States by Sections 104, 106(a), 107, and 122 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. §§ 9604, 9606(a), 9607, and 9622 ("CERCLA"). This authority was delegated to the Administrator of the United States Environmental Protection Agency ("EPA") by Executive Order No. 12580, January 23, 1987, 52 Federal Register 2923; redelegated to the EPA Regional Administrators by EPA Delegation Nos. 14-14-A, 14-14-C and 14-14-D; and further redelegated to EPA Region 10 Cleanup Unit Managers by Regional Redelegation Order R10 14-14-A and 14-14-B on March 25, 1996.

2. EPA Region 10 and Gary and Judith Hinkle ("Respondents") voluntarily enter into this Order to provide for the performance of a removal action by Respondents at the River Terrace RV Site ("site") and the reimbursement of response costs incurred by the United States in connection with this activity. The site is located at 44761 Sterling Highway on the north bank of the Kenai River in the City of Soldotna, Alaska, Section 32, Township 5N, Range 10W, of the Seward Meridian in the Kenai Peninsula Borough. The Order requires Respondents to conduct a removal action to abate an imminent and substantial endangerment to the public health, welfare, or the environment that may be presented by the actual or threatened release of hazardous substances, pollutants, and contaminants at or from the site.

3. EPA Region 10 has notified the State of Alaska of this action under Section 106(a) of CERCLA, 42 U.S.C § 9606(a).

4. Respondents' participation in this Order does not constitute an admission of liability nor an admission of the findings and determinations contained in this Order except in a proceeding to enforce the Order.

5. Respondents shall comply with this Order. Respondents may not contest the validity of this Order.

River Terrace Order on Consent
For Removal Response Activities - Page 4

II. PARTIES BOUND

6. This Order binds EPA, Respondents and Respondents' heirs, successors, and assigns. Any change in ownership or corporate status of Respondents including, but not limited to, any transfer of assets or real or personal property will not alter Respondents' responsibilities under this Order. Respondents are jointly and severally liable for carrying out all activities required by this Order. Compliance or noncompliance by one Respondent with any provision of this Order does not excuse or justify noncompliance by the other Respondent.

7. Respondents shall ensure that their contractors, subcontractors, and representatives receive a copy of and comply with this Order. Respondents shall be responsible for any noncompliance with this Order.

III. FINDINGS OF FACT

8. The site is an approximately 10 acre property on the banks of the Kenai River in Soldotna, Alaska, in a mixed commercial/residential area. Respondents own the site, which they acquired in 1974. They operate a recreational vehicle park at the site that caters to the sport fishing and tourism industry.

9. A dry-cleaning business was operated at the site from the 1960's to the 1980's when it was converted to its current use. During that time, perchloroethylene ("PCE") was used as a solvent in the dry-cleaning process.

10. In 1992 during the investigation of a citizen's complaint, the Alaska Department of Environmental Conservation ("ADEC") discovered 22 drums, some containing hazardous substances, several of the drums displayed the original manufacturers label "perchloroethylene". Many of the drums contained waste oil and were disposed of accordingly. One 55 gallon drum labeled "perchloroethylene" had a hole approximately 1 inch in diameter in it's top. This drum contained an unknown waste and was disposed of through the Kenai Borough hazardous waste disposal program. The content of this drum remains undocumented.

11. The primary contaminants of concern at the site are PCE and its degradation products. The source of this contamination appears to have been the dry-cleaning operation that previously occupied the property.

12. Extensive assessments have been conducted by Respondents and ADEC of the soil, surface water and river sediments adjacent to the site. The area of contaminated soils is well characterized as a result of this assessment work. Approximately 500 cubic yards of contaminated soil was excavated into three storage cells by the Respondent under ADEC oversight. These storage cells remain on-site. Additional uncontained contaminated soil remains on-site as delineated in the attached maps generated by the Respondents contractor (e.g.: Kennard Environmental Consultants). No further action has been taken to remove the contaminated soils.

13. The site assessments conducted by Respondents and ADEC have delineated three discrete areas of highest contaminant concentration. See attached delineation maps (Source: Kennard Environmental Consultants). These are the areas designated for a removal action under this Order.

14. The site assessments conducted by Respondents and ADEC have determined the contaminant concentrations in the three media tested. These concentrations are as follows:

Soil: (Source: Kennard Environmental Consultants)

PCE up to 4,700 parts per million

River sediments adjacent to the site: (Source: ADEC Sediment and Water Quality Report)

PCE from 77 to 510 parts per billion

cis-1,2-dichloroethylene from 79 to 670 parts per billion

Surface water: (Source: ADEC Sediment and Water Quality Report)

PCE up to 23 parts per billion.

1 15. Contamination at the site poses an ecological risk. The Kenai River watershed is one of the
2 most productive anadromous fish drainages in Alaska and supports one of the largest commercial,
3 sport and subsistence fisheries in the state. PCE and its degradation products are considered toxic to
4 aquatic life at low concentrations.

5 16. Contamination at the site may pose a threat to human health. Potential exposure
6 pathways to the contaminants are through groundwater by way of direct ingestion and dermal
7 contact with contaminated soil and sediments. PCE is a suspected human carcinogen

8 IV. CONCLUSIONS OF LAW AND DETERMINATIONS

9 17. The site is a "facility" as defined in Section 101(9) of CERCLA, 42 U.S.C. §
10 9601(9).

11 18. The contaminants found at the site as set forth in paragraphs 10-14 above include
12 "hazardous substances" as defined in Section 101(14) of CERCLA, 42 U.S.C. § 9601(14).

13 19. Respondents are responsible parties under Section 107(a) of CERCLA, 42 U.S.C.
14 § 9607(a).

15 20. Conditions described in the Findings of Fact above constitute an actual or threatened
16 "release" of a hazardous substance from the facility as defined by Section 101(22) of CERCLA, 42
17 U.S.C. § 9601(22).

18 21. The actual or threatened release of hazardous substances from the site may present an
19 imminent and substantial endangerment to the public health, welfare, or the environment within the
20 meaning of Section 106(a) of CERCLA, 42 U.S.C. § 9606(a).

21 22. The removal actions required by this Order are necessary to protect the public health,
22 welfare, or the environment, and are not inconsistent with the National Contingency Plan ("NCP") or
23 CERCLA.

24 V. ORDER

25 Designation of Contractor, Project Coordinator, and On-Scene Coordinator

26 23. Respondents shall perform the removal action required by this Order by retaining one
27

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1 or more contractors to perform the work. Respondents shall notify EPA of the names and
2 qualifications of any contractors within two business days of the effective date of this Order.
3 Respondents shall also notify EPA of the names and qualifications of any other contractors or
4 subcontractors retained to perform the removal action under this Order at least two days before
5 starting work. EPA may disapprove any contractor or subcontractor retained by the Respondents to
6 do the work. If EPA disapproves a selected contractor or the Respondents, Respondents shall retain
7 a different contractor within five business days following EPA's disapproval and shall notify EPA of
8 that contractor's name or Respondents and qualifications within five business days of EPA's
9 disapproval.

10 24. Within two days after the effective date of this Order, Respondents shall designate a
11 Project Coordinator responsible for administration of all Respondents' actions required by the Order.
12 Respondents shall submit the designated coordinator's name, address, telephone number, and
13 qualifications to EPA. To the greatest extent possible, the Project Coordinator shall be present on
14 site or readily available during site work. EPA may disapprove any Project Coordinator named by
15 the Respondents. If EPA disapproves a selected Project Coordinator, Respondents shall retain a
16 different Project Coordinator and notify EPA of that person's name, address, telephone number, and
17 qualifications within five business days following EPA's disapproval. Receipt by Respondents'
18 Project Coordinator of any notice or communication from EPA relating to this Order shall constitute
19 receipt by Respondents.

20 25. EPA has designated Matthew Carr in its Region 10 Office of Environmental Cleanup
21 as its On-Scene Coordinator ("OSC"). Respondents shall direct all submissions required by this
22 Order to the OSC at the following address:

23 U.S. EPA Region 10, Alaska Operations Office
24 Federal Building Room 537
25 222 W. 7th Ave., # 19
26 Anchorage, AK 99513-7588.

26 26. EPA and Respondents may change the designated OSC or Project Coordinator.
27 Respondents shall notify EPA, five business days before any change is made. This initial

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1 notification may be oral but shall be followed promptly by written notice.

2 Work to Be Performed

3 27. Respondents shall perform, at a minimum, the following removal action:

4 Phase I - excavate and stockpile all contaminated soils in excess of 11.5 ppm PCE as
5 delineated in the attached maps into a fully encapsulating storage cell. Install and maintain
6 appropriate engineering controls to prevent the migration of contaminants into the Kenai River.
7 Conduct post-excavation sampling to confirm appropriate cleanup standards are attained. Backfill
8 excavation with clean soil or soil remediated to below approved cleanup levels. Phase I work shall
9 be completed by November 30, 1997.

10 Phase II - Subject contaminated soils to a thermal desorption treatment process or alternate
11 remediation process as approved by EPA. Sample treated soils to confirm appropriate cleanup
12 standards are attained. Backfill treated soils onto the site. Phase II work shall be completed by
13 September 1, 1998.

14 Work Plan and Implementation

15 28. Within two days after the effective date of this Order, Respondents shall submit a
16 draft Work Plan for performing the removal action set forth above to EPA for approval. The draft
17 Work Plan must provide a description of, and an expeditious schedule for, the actions required by
18 this Order.

19 29. EPA may approve, disapprove, require revisions to, or modify the draft Work Plan
20 and approve it as modified. If EPA requires revisions, Respondents shall submit a revised draft
21 Work Plan within two days of receipt of EPA's notification of the required revisions. Respondents
22 shall implement the Work Plan as finally approved, in writing, by EPA in accordance with the
23 schedule approved by EPA. Once approved, or approved with modifications, the Work Plan, the
24 schedule, and any subsequent modifications shall be incorporated into and made a fully enforceable
25 part of this Order. Respondents shall notify EPA at least 48 hours before performing any on-site
26 work under the EPA-approved Work Plan. Respondents may not begin or undertake any removal
27

1 action at the site without prior written EPA approval.

2 Health and Safety Plan

3 30. Within two days after the effective date of this Order, Respondents shall submit for
4 EPA review and comment a plan that ensures the protection of the public health and safety during
5 performance of on-site work under this Order. This plan shall be prepared in accordance with EPA's
6 current Standard Operating Safety Guide, dated June 1992. In addition, the plan must comply with
7 all current applicable Occupational Safety and Health Administration regulations found at 29 C.F.R.
8 Part 1910.

9 Quality Assurance and Sampling

10 31. All sampling and analyses performed under this Order shall conform to EPA
11 direction, approval, and guidance regarding sampling, quality assurance/quality control ("QA/QC"),
12 data validation, and chain-of-custody procedures. Respondents shall ensure that the laboratory used
13 to perform the analyses participates in a QA/QC program that complies with the appropriate EPA
14 guidance. Respondents shall follow the following documents, as appropriate, as guidance for
15 QA/QC and sampling: "Quality Assurance/Quality Control Guidance for Removal Activities:
16 Sampling QA/QC Plan and Data Validation Procedures", OSWER Directive Number 9360.4-01;
17 "Environmental Response Team Standard Operating Procedures", OSWER Directive Numbers
18 9360.4-02 through 9360.4-08.

19 32. Upon request by EPA, Respondents shall have a laboratory analyze samples
20 submitted by EPA for quality-assurance monitoring. Respondents shall provide to EPA the QA/QC
21 procedures followed by all sampling teams and laboratories performing data collection and/or
22 analysis.

23 Post-Removal Site Control

24 33. In accordance with the Work Plan schedule or as otherwise directed by EPA,
25 Respondents shall submit a proposal for post-removal site control within 30 days after issuance of
26 the this Order consistent with Section 300.415(l) of the NCP and OSWER Directive 9360.2-02
27

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1 (Policy on Management of Post-Removal Site Control). Upon written EPA approval, Respondents
2 shall implement the controls and shall provide EPA with documentation of all post-removal site
3 control arrangements.

4 Reporting

5 34. Respondents shall submit a written progress report to EPA concerning actions
6 undertaken under this Order every 10 days after the date of receipt of EPA's approval of the Work
7 Plan until termination of this Order, unless otherwise directed by the OSC in writing. These reports
8 shall describe all significant developments during the preceding period, including the actions
9 performed and any problems encountered, analytical data received during the reporting period, and
10 the developments anticipated during the next reporting period, including a schedule of actions to be
11 performed, anticipated problems, and planned resolutions of past or anticipated problems.

12 35. Respondents shall, at least 30 days before conveying any interest in real property at
13 the site, give written notice that the property is subject to this Order to the transferee and written
14 notice to EPA and ADEC of the proposed conveyance, including the name and address of the
15 transferee. Respondents shall require that any successor comply with the immediately proceeding
16 sentence and the section on Access to Property and Information.

17 Final Report

18 36. Within 30 days after completion of all removal actions required under this Order, the
19 Respondents shall submit for EPA review and approval a final report summarizing the actions taken
20 to comply with this Order. The final report shall conform, at a minimum, with the requirements set
21 forth in Section 300.165 of the NCP entitled "OSC Reports." The final report shall include a good
22 faith estimate of total costs or a statement of actual costs incurred in complying with the Order, a
23 listing of quantities and types of materials removed off-site or handled on-site, a discussion of
24 removal and disposal options considered for those materials, a listing of the ultimate destination of
25 those sampling and analyses performed, and accompanying appendices containing all relevant
26 documentation generated during the removal action (such as manifests, invoices, bills, contracts, and
27

1 permits). The final report shall also include the following certification signed by a person who
2 supervised or directed the preparation of that report:

3 Under penalty of perjury, I certify that to the best of my knowledge, after appropriate
4 inquiries of all relevant persons involved in the preparation of the report, the
5 information submitted is true, accurate, and complete. I am aware that there are
6 significant penalties for submitting false information, including the possibility of fine
7 and imprisonment for knowing violations.

8 Access to Property and Information

9 37. Respondents shall provide and/or obtain access to the site and off-site areas to which
10 access is necessary to implement this Order and provide access to all records and documents related
11 to the conditions at the site and the actions conducted under this Order. Access shall be provided to
12 EPA employees, contractors, agents, consultants and representatives. These individuals must be
13 permitted to move freely at the site and appropriate off-site areas to conduct actions which EPA
14 determines necessary. Respondents shall submit to EPA, upon request, the results of all sampling or
15 tests and all other data generated by Respondents or their contractors on Respondents' behalf during
16 implementation of this Order. Respondents reserve the right to negotiate on-site access of ADEC
17 personnel with the EPA OSC. All requests for access by ADEC personnel shall be directed to and
18 approved by the EPA OSC only after consultation and concurrence of the respondent or respondents
19 representative. *SCA.*

20 38. Where action under this Order is to be performed in areas owned by, or in possession
21 of, someone other than Respondents, Respondents shall use their best efforts to obtain all necessary
22 access agreements within five days after the effective date of this Order, or as otherwise specified in
23 writing by the OSC. Respondents shall immediately notify EPA if, after using their best efforts, they
24 are unable to obtain these agreements. Respondents shall describe in writing their efforts to obtain
25 access to the extent necessary to effectuate the response actions described in this Order.
26 Respondents shall reimburse EPA for all costs and attorney fees incurred by the United States in
27 obtaining access.

28 Record Retention, Documentation, Availability of Information

1 39. Respondents shall preserve all documents and information relating to work performed
2 under this Order and to the hazardous substances released at or from the site for ten years following
3 completion of the removal actions required by this Order. At the end of this ten year period and 30
4 days before any document or information is destroyed, Respondents shall notify EPA that the
5 documents and information are available to EPA for inspection and, upon request, shall provide the
6 originals or copies of the documents and information to EPA. Respondents shall provide documents
7 and information retained under this section at any time before expiration of the ten year period at the
8 written request of EPA.

9 40. Respondents may assert a business confidentiality claim under 40 C.F.R.
10 § 2.203(b) with respect to part or all of any information submitted to EPA under this Order if the
11 claim is allowed by Section 104(e)(7) of CERCLA, 42 U.S.C. § 9604(e)(7). Analytical and other
12 data specified in Section 104(e)(7)(F) of CERCLA may not be claimed as confidential by the
13 Respondents. EPA shall disclose information covered by a business confidentiality claim only to the
14 extent permitted by, and by means of, the procedures set forth at 40 C.F.R. Part 2, Subpart B. If no
15 claim accompanies the information when it is received by EPA, EPA may make it available to the
16 public without further notice to Respondents. Respondents shall maintain a running log of
17 privileged documents on a document-by-document basis, containing the date, authors, addressees,
18 subject, the privilege or grounds claimed (such as, attorney work product, attorney-client), and the
19 factual basis for assertion of the privilege. Respondents shall keep the privilege log on file and
20 available for inspection. EPA may at any time challenge claims of privilege.

21 Off-Site Shipments

22 41. All hazardous substances, pollutants, or contaminants removed off-site under this
23 Order for treatment, storage, or disposal shall be treated, stored, or disposed of at a facility in
24 compliance, as determined by EPA, with Section 121(d)(3) of CERCLA, 42 U.S.C. § 9621(d)(3),
25 and the "Revised Procedures for Implementing Off-Site Response Actions", OSWER Directive
26 Number 9834.11, November 13, 1987. EPA will provide information upon request on the

27
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1 acceptability of a facility under Section 121(d)(3) of CERCLA, 42 U.S.C. § 9621(d)(3), and the
2 OSWER directive.

3 Compliance With Other Laws

4 42. Respondents shall perform all actions required under this Order in accordance with all
5 applicable local, state, and federal laws and regulations except as provided in Section 121(e) of
6 CERCLA, 42 U.S.C. § 9621(e), and 40 C.F.R. Section 300.415(i). In accordance with 40 C.F.R.
7 Section 300.415(i), all on-site actions required under this Order shall, to the extent practical as
8 determined by EPA considering the exigencies of the situation, attain applicable or relevant and
9 appropriate requirements ("ARARs") under federal environmental or state environmental or facility
10 siting laws. See, "The Superfund Removal Procedures: Guidance on the Consideration of ARARs
11 During Removal Actions", OSWER Directive No.9360.3-02, August 1991.

12 Emergency Response and Notification of Releases

13 43. If any incident or change in site conditions during the actions conducted under this
14 Order causes or threatens to cause an additional release of hazardous substances from the site or an
15 endangerment to the public health, welfare, or the environment, Respondents shall immediately take
16 all appropriate action. Respondents shall take these actions in accordance with all applicable
17 provisions of this Order, including, but not limited to, the Health and Safety Plan, to prevent, abate,
18 or minimize any release or endangerment caused or threatened by the release. Respondents shall
19 immediately notify the OSC at 907-271-3616 or, if the OSC is unavailable, the Regional Duty
20 Officer at 206-553-1263 of the incident or site conditions. If Respondents fail to respond, EPA may
21 respond to the release or endangerment and reserves the right to pursue cost recovery.

22 44. If any hazardous substance is released from the site, Respondents shall immediately
23 notify the Regional Duty Officer at (206) 553-1263 and the National Response Center at (800) 424-
24 8802. Respondents shall submit a written report to EPA within seven days after each release, setting
25 forth the events that occurred and the measures taken or to be taken to mitigate any release or
26 endangerment caused or threatened by the release and to prevent the reoccurrence of a release. This
27

1 reporting requirement is in addition to reporting under Section 103(c) of CERCLA, 42 U.S.C.
2 § 9603(c), and Section 304 of the Emergency Planning and Community Right-To-Know Act of
3 1986, 42 U.S.C. § 11001, et. seq.

4 VI. AUTHORITY OF THE EPA ON-SCENE COORDINATOR

5 45. The OSC will oversee the Respondents' implementation of this Order. The OSC has
6 the authority vested in an OSC by the NCP, including the authority to halt, conduct, or direct any
7 work required by this Order or to direct any other removal action undertaken at the site. Absence of
8 the OSC from the site shall not be cause for stoppage of work unless the OSC specifically directs. .

9 VII. REIMBURSEMENT OF COSTS

10 46. Respondents shall reimburse EPA for all response costs, not inconsistent with the
11 NCP, incurred by the United States. Response costs are all costs, including, but not limited to, direct
12 and indirect costs, that the United States incurs in reviewing or developing plans, reports, and other
13 items under this Order verifying the work, or otherwise implementing, overseeing, or enforcing this
14 Order.

15 47. On a periodic basis, EPA will submit to Respondents a bill for response costs that
16 includes a SCORES or other cost summary used by EPA as the basis for payment demands.
17 Respondents shall, within 30 days of receipt of the bill, remit a cashier's or certified check for the
18 amount of the bill made payable to the "Hazardous Substance Superfund", at the following address:

19 Mellon Bank
20 EPA Region 10
21 ATTN: Superfund Accounting
22 P.O. Box 360903M
23 Pittsburgh, PA 15251.

24 48. Respondents shall simultaneously transmit a copy of the check to EPA's OSC.
25 Payments must be designated as "Response Costs - River Terrace PCE Site" and must reference the
26 payor's name and address, the EPA site identification number (104D), and the docket number of this
27 Order (10-97-0139-CERCLA).

28 49. If payment for past response costs is not made within 30 days after Respondents'

1 receipt of the bill, Respondents shall pay interest on the unpaid balance. Interest is established at the
2 rate specified in Section 107(a) of CERCLA, 42 U.S.C. § 9607(a). The interest on response costs
3 will begin to accrue on the date of the Respondents' receipt of the bill. Interest shall accrue through
4 the date of the payment. Payments of interest made under this paragraph shall be in addition to all
5 other remedies or sanctions available to the United States by virtue of Respondents' failure to make
6 timely payments under this section.

7 50. Respondents may dispute all or part of a bill for response costs submitted under this
8 Order if Respondents believe that EPA has made an accounting error or that a cost item is
9 inconsistent with the NCP.

10 51. If any dispute over costs is resolved before payment is due, the amount due will be
11 adjusted as necessary. If the dispute is not resolved before payment is due, Respondents shall pay
12 the full amount of the uncontested costs into the Hazardous Substance Fund as specified above on or
13 before the due date. Within the same time period, Respondents shall pay the full amount of the
14 contested costs into an interest-bearing escrow account. Respondents shall simultaneously transmit
15 a copy of both checks to the OSC. Respondents shall ensure that the prevailing party or parties in
16 the dispute shall receive the amount upon which they prevailed from the escrow funds plus interest
17 within ten days after the dispute is resolved.

18 VIII. DISPUTE RESOLUTION

19 52. Any dispute which arises under or with respect to this Order will, in the first instance,
20 be the subject of informal negotiations between Respondents and EPA. The period for informal
21 negotiations may not exceed 15 days from the time the dispute arises, unless this period is modified
22 by written agreement of Respondents and EPA. The dispute will be considered to have arisen when
23 Respondents send EPA a written Notice of Dispute. If the parties cannot resolve a dispute
24 informally, the position advanced by EPA will prevail unless formal dispute resolution is invoked
25 under this section. The dispute resolution procedures of this section will be the exclusive
26 mechanism to resolve disputes arising under or with respect to this Order. The fact that dispute

1 resolution is not specifically referenced in a section of this Order does not bar Respondents from
2 invoking the procedures with respect to any matter in dispute.

3 53. Within 20 days after the conclusion of the informal negotiation period, Respondents
4 may request a determination by EPA's Region 10 Environmental Cleanup Office Director by
5 submitting a written Statement of Position to EPA on the matter in dispute including, but not limited
6 to, any factual data, analysis, or opinion supporting that position and any supporting documentation
7 relied upon by Respondents.

8 54. Within 20 days after receipt of Respondents Statement of Position, EPA will provide
9 its Statement of Position to Respondents, including, but not limited to, any factual data, analysis, or
10 opinion supporting its position and any supporting documentation relied upon by EPA. If EPA does
11 not provide its Statement of Position within 20 days, stipulated penalties will not accrue beyond the
12 20th day until EPA has provided its Statement of Position.

13 55. EPA will maintain an administrative record of the dispute which will contain all
14 Statements of Position, including supporting documentation, submitted under this section. Where
15 appropriate, EPA may allow submission of supplemental Statements of Position by the parties.

16 56. Within 20 days after receipt of EPA's Statement of Position, the Environmental
17 Cleanup Office Director will issue a final administrative decision resolving the dispute based on the
18 administrative record described in paragraph 55 above. If the Environmental Cleanup Office
19 Director does not issue a final administrative decision within 20 days, stipulated penalties will not
20 accrue beyond the 20th day until a final administrative decision has been issued. This decision will
21 bind Respondents unless, in response to Respondents' failure to comply, EPA seeks to enforce the
22 decision in court and Respondents prevail on judicial review as provided in Paragraph 57 below.

23 57. If Respondents do not comply with EPA's final administrative decision, EPA reserves
24 the right, in its sole discretion, to seek either stipulated or statutory penalties from Respondents for
25 violation of the Order and/or to pursue any other enforcement option provided in CERCLA. If EPA
26 moves to enforce this Order in court, Respondents may request judicial review of EPA's final
27

1 administrative decision based on the administrative record developed during the dispute resolution
2 process. Any judicial review of the dispute will be under the arbitrary and capricious standard.

3 58. While a matter is pending in dispute resolution, Respondents are not relieved of their
4 obligations to perform other activities and submit deliverables in accordance with the schedules
5 developed under this Order. The invocation of dispute resolution does not stay the accrual of
6 stipulated or statutory penalties under this Order. Any issue submitted for dispute resolution may
7 not be the subject of an enforcement action until the dispute resolution process has been exhausted.

8 IX. FORCE MAJEURE

9 59. Respondents agree to perform all requirements under this Order within the time limits
10 established unless performance is delayed by a *force majeure*. A *force majeure* is any event arising
11 from causes beyond Respondents' control including, but not limited to, actions of their contractors
12 and subcontractors, that delays or prevents performance of any obligation under this Order despite
13 Respondents' best efforts to fulfill the obligation. *Force majeure* does not include financial inability
14 to complete the work or increased cost of performance.

15 60. Respondents shall notify EPA orally within 24 hours after the event and in writing
16 within five days after Respondents become or should have become aware of events which constitute
17 a *force majeure*. Notice must identify the event causing the delay and anticipated length of delay,
18 including necessary demobilization and re-mobilization; state the measures taken or to be taken to
19 minimize the delay; and estimate the timetable for implementation of remedial measures.

20 Respondents shall take all reasonable measures to avoid and minimize the delay. Failure to comply
21 with the notice provision of this action shall waive Respondents' right to claim *force majeure*.

22 61. If EPA determines a delay in performance of a requirement under this Order is or was
23 attributable to a *force majeure*, the time period for performance of that requirement will be extended
24 as EPA considers necessary, but not less than the actual time of the *force majeure* delay. An
25 extension will not alter Respondents' obligation to perform or complete other tasks required by the
26 Order that are not directly affected by a *force majeure*.

X. DELAY IN PERFORMANCE/STIPULATED PENALTIES.

62. For each day that Respondents fail to complete a deliverable in a timely manner, fail to produce a deliverable of acceptable quality, or otherwise fail to perform in accordance with the requirements of this Order, Respondents shall be liable for stipulated penalties. Penalties begin to accrue on the day that performance is due or a violation occurs, and extend through the period of correction. Where a revised submission by Respondents is required, stipulated penalties will continue to accrue until a satisfactory deliverable is produced. EPA will provide written notice for violations that are not based on timeliness. Penalties will accrue from the day a violation begins, regardless of when or whether notice is provided. Payment is due within 30 days of receipt of a demand letter from EPA.

63. Respondents shall pay interest on the unpaid balance, which shall begin to accrue at the end of the 30-day period, at the rate established by the Department of Treasury under 30 U.S.C. § 3717. Respondents shall pay a handling charge of 1 percent, to be assessed at the end of each 30 day period, and a 6 percent per annum penalty charge, to be assessed if the penalty is not paid in full within 90 days after it is due.

64. Respondents shall make all payments by forwarding a check to:

Mellon Bank
EPA Region 10
ATTN: Superfund Accounting
P.O. Box 360903M
Pittsburgh, Pennsylvania 15251.

65. Checks must identify the name of the site, River Terrace RV Park, the site identification number, 104D, and the docket number and title of this Order. Respondents shall forward a copy of the check and/or transmittal letter to the EPA Project Coordinator.

66. For the original and any revised Work Plan, stipulated penalties will accrue in the amount of \$500 per day per violation for the first seven days of noncompliance, \$1,000 per day per violation for the 8th through 14th day of noncompliance, \$3,000 per day per violation for the 15th day through the 30th day, and \$5,000 per day per violation for all violations lasting beyond 30 days.

1 .67. For any other non-compliance with this Order, stipulated penalties will accrue in the
2 amount of \$250 per day per violation for the first week of noncompliance, \$500 per day per violation
3 for the 8th through 14th day of noncompliance, \$1,500 per day per violation for the 15th day through
4 the 30th day of noncompliance, and \$4,000 per day per violation for all violations lasting beyond 30
5 days.

6 68. Respondents may dispute EPA's right to the stated amount of penalties by invoking
7 the dispute resolution procedures under Section VIII above. Penalties will accrue but need not be
8 paid during the dispute resolution period. If Respondents do not prevail upon resolution, all
9 penalties will be due to EPA within 30 days of resolution of the dispute. If Respondents prevail
10 upon resolution, no penalties will be paid.

11 69. If EPA provides for corrections to be reflected in the next deliverable and does not
12 require resubmission of that deliverable, stipulated penalties for that interim deliverable will cease to
13 accrue on the date of that decision by EPA.

14 70. The stipulated penalties provisions do not preclude EPA from pursuing any other
15 remedies or sanctions which are available to EPA because of Respondents' failure to comply with
16 this Order. Payment of stipulated penalties does not alter Respondents' obligation to complete
17 performance under this Order.

18 XI. RESERVATION OF RIGHTS

19 71. Except as otherwise specifically provided, nothing in this Order limits the authority
20 of EPA or the United States to take, direct, or order actions necessary to protect public health,
21 welfare, or the environment and to prevent, abate, or minimize an actual or threatened release of
22 hazardous substances, pollutants, or contaminants at or from the site. Nothing in this Order prevents
23 EPA from pursuing legal or equitable relief to enforce this Order, taking other legal or equitable
24 action EPA considers necessary, or requiring Respondents to perform additional activities under
25 CERCLA or other applicable law. EPA reserves the right to bring an action against Respondents
26 under Section 107 of CERCLA, 42 U.S.C. § 9607, for recovery of response costs incurred by the
27

1 United States under this Order or otherwise site-related and not reimbursed by Respondents.

2 XII. OTHER CLAIMS

3 72. The United States and EPA assume no liability for injuries or damages to persons or
4 property resulting from any acts or omissions of Respondents. Neither the United States nor EPA
5 may be considered a party to any contract entered into by the Respondents or their employees,
6 agents, successors, representatives, assigns, contractors, or consultants in carrying out actions under
7 this Order.

8 73. Except as provided below in the section entitled "Covenant Not to Sue," nothing in
9 this Order constitutes a satisfaction or release from any claim or cause of action against the
10 Respondents or any person not a party to this Order for any liability that person may have under
11 CERCLA, other statutes, or the common law including, but not limited to, any claims of the United
12 States for costs, damages, and interest under Sections 106(a) and 107(a) of CERCLA, 42 U.S.C.
13 §§ 9606(a) and 9607(a).

14 74. This Order does not constitute a preauthorization of funds under Section 111(a)(2) of
15 CERCLA, 42 U.S.C. § 9611(a)(2). Respondents waive any claim to payment under Sections 106(b),
16 111, and 112 of CERCLA, 42 U.S.C. §§ 9606(b), 9611, and 9612, against the United States or the
17 Hazardous Substance Superfund arising out of any action performed under this Order.

18 XIII. COVENANT NOT TO SUE

19 75. Except as otherwise provided in this Order, upon issuance by EPA of a notice of
20 completion under Section XX below, EPA covenants not to sue Respondents for damages or civil
21 penalties or to take administrative action against Respondents for any failure to perform removal
22 actions agreed to in this Order.

23 76. Except as otherwise provided in this Order, in consideration and upon Respondents'
24 payment of the response costs specified in Section VII above, EPA covenants not to sue or to take
25 administrative action against Respondents under Section 107(a) of CERCLA, 42 U.S.C. § 9607(a),
26 for recovery of response costs incurred by the United States in connection with this Order. This
27

1 covenant not to sue takes effect upon the receipt by EPA of the payments required by Section VII.

2 77. Covenants not to sue are conditioned upon the complete and satisfactory performance
3 by Respondents of their obligations under this Order. These covenants not to sue extend
4 Respondents' obligations under this Order, but not the obligations of any other person.

5 XIV. CONTRIBUTION PROTECTION

6 78. Respondents are entitled to protection from contribution actions or claims for matters
7 addressed in this Order to the extent provided by Sections 113(f)(2) and 122(h)(4) of CERCLA, 42
8 U.S.C. §§ 9613(f)(2) and 9622(h)(4). Nothing in this Order precludes the United States or the
9 Respondents from asserting any claims, causes of action or demands against any person not a party
10 to this Order for indemnification, contribution, cost recovery, or any other claim.

11 XV. INDEMNIFICATION

12 79. Respondents shall indemnify, save and hold harmless the United States, its officials,
13 agents, contractors, subcontractors, employees, and representatives from all claims or causes of
14 action arising from, or on account of, acts or omissions of Respondents or Respondents' heirs,
15 employees, agents, contractors, subcontractors, receivers, trustees, successors or assigns in carrying
16 out actions under this Order and for any claim for damages or reimbursement arising from or on
17 account of any contract, agreement, or arrangement between either or both Respondents and any
18 other person for performance of work on or relating to the site, including claims on account of
19 construction delays. Respondents shall pay the United States all costs incurred by the United States,
20 including litigation costs arising from or on account of claims made against the United States based
21 on any act or omissions described in this section.

22 XVI. INSURANCE

23 80. At least seven days before starting any on-site work under this Order, Respondents
24 shall secure and maintain for the duration of this Order comprehensive general liability insurance
25 and automobile insurance with limits of \$1 million, combined single limit. Within the same time
26 period, Respondents shall provide EPA with certificates of this insurance and a copy of each
27

1 insurance policy. If Respondents demonstrate by evidence satisfactory to EPA that any contractor
2 or subcontractor maintains insurance equivalent to that described above or insurance covering some
3 or all of the same risks but in an equal or lesser amount, then Respondents need provide only that
4 portion of the insurance described above which is not maintained by a contractor or subcontractor.

5 XVII. FINANCIAL ASSURANCE

6 81. Within 30 days after the effective date of this Order and every 30 days after until EPA
7 issues a notice of completion of work under Section XX, Respondents shall demonstrate to EPA that
8 either one or both of them meets one of the financial assurance mechanisms specified in 40 C.F.R.
9 Section 264.143 for the sufficient estimated costs of work to be performed by Respondents under
10 this Order.

11 XVIII. MODIFICATIONS

12 82. The OSC may modify any plan, schedule or statement of work. Any modification
13 must be in writing. The parties may modify any other requirements of this Order by mutual written
14 agreement.

15 83. To deviate from any approved work plan or schedule or statement of work,
16 Respondents, through their Project Coordinator, must submit for EPA approval a written request
17 describing the proposed change and the reason for it. No informal advice, guidance, suggestion, or
18 comment by EPA about any report, plan, specification, schedule, or other writing Respondents
19 submit to EPA will relieve Respondents of their obligation to obtain the formal approval required by
20 this section or to comply with all requirements of this Order until its modification.

21 XIX. ADDITIONAL REMOVAL ACTION

22 84. If EPA determines that additional removal action not included in an approved work
23 plan is needed to protect public health, welfare, or the environment, EPA will so notify Respondents.
24 Unless otherwise stated by EPA, within seven days after receipt of notice from EPA that additional
25 removal actions are necessary to protect public health, welfare, or the environment, Respondents
26 shall notify EPA of their willingness to undertake the additional work and shall submit a work plan

1 for this additional work to EPA within the time specified in EPA's notice. Following EPA's written
2 approval of the additional work plan, Respondents shall perform the additional work.

3 XX. NOTICE OF COMPLETION

4 85. EPA will provide Respondents with a notice of completion after EPA has reviewed
5 Respondent's final report and determined that Respondents have fully performed all removal actions
6 required by this Order. If EPA determines that any required removal actions have not been
7 completed, EPA will so notify Respondents, provide a list of the deficiencies, and require
8 Respondents to modify the work plan as appropriate to remedy the deficiencies. Respondents shall
9 implement the modified and approved work plan and submit a modified final report as EPA requires.
10 Failure by Respondents to implement the approved modified work plan is a violation of this Order.

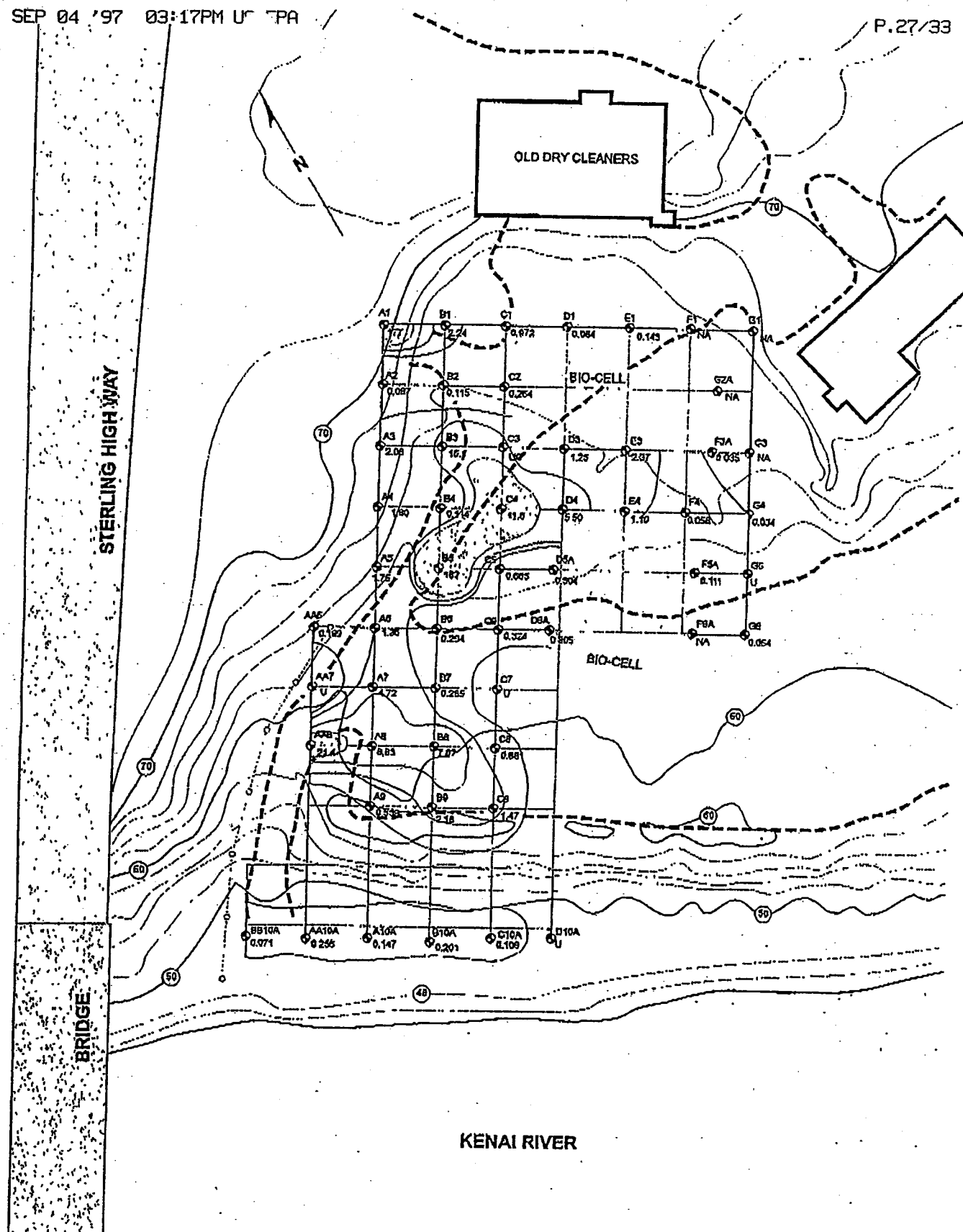
11 XXI. SEVERABILITY

12 86. If a court issues an order that invalidates any provision of this Order or finds that
13 Respondents have sufficient cause not to comply with one or more of its provisions, Respondents
14 remain bound to comply with all provisions not invalidated or determined to be subject to a
15 sufficient cause defense by a court of competent jurisdiction.

16 XXII. EFFECTIVE DATE

17 87. This Order takes effect one day after signature by EPA and notice to Respondents.

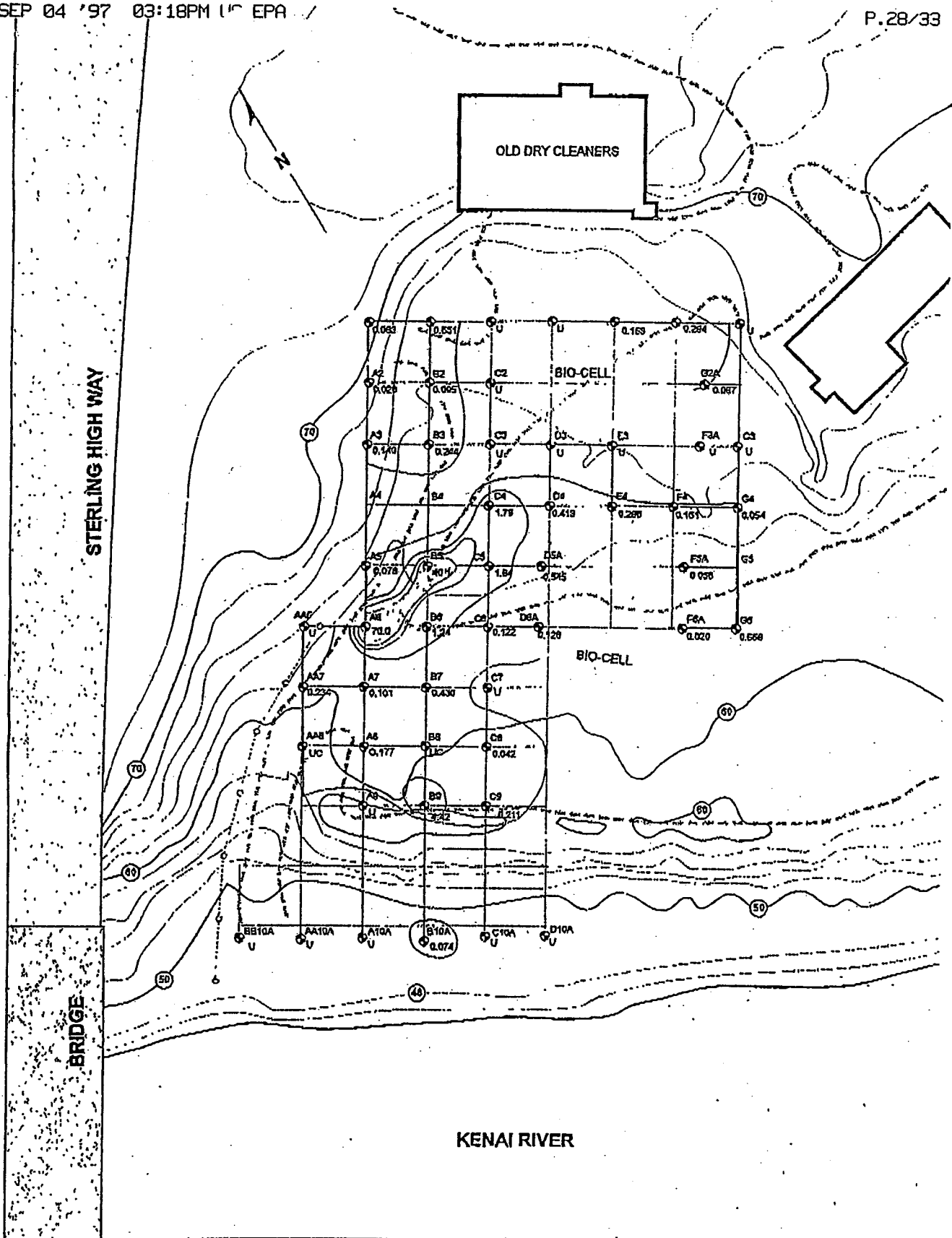
APPENDIX A
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KENAI RIVER

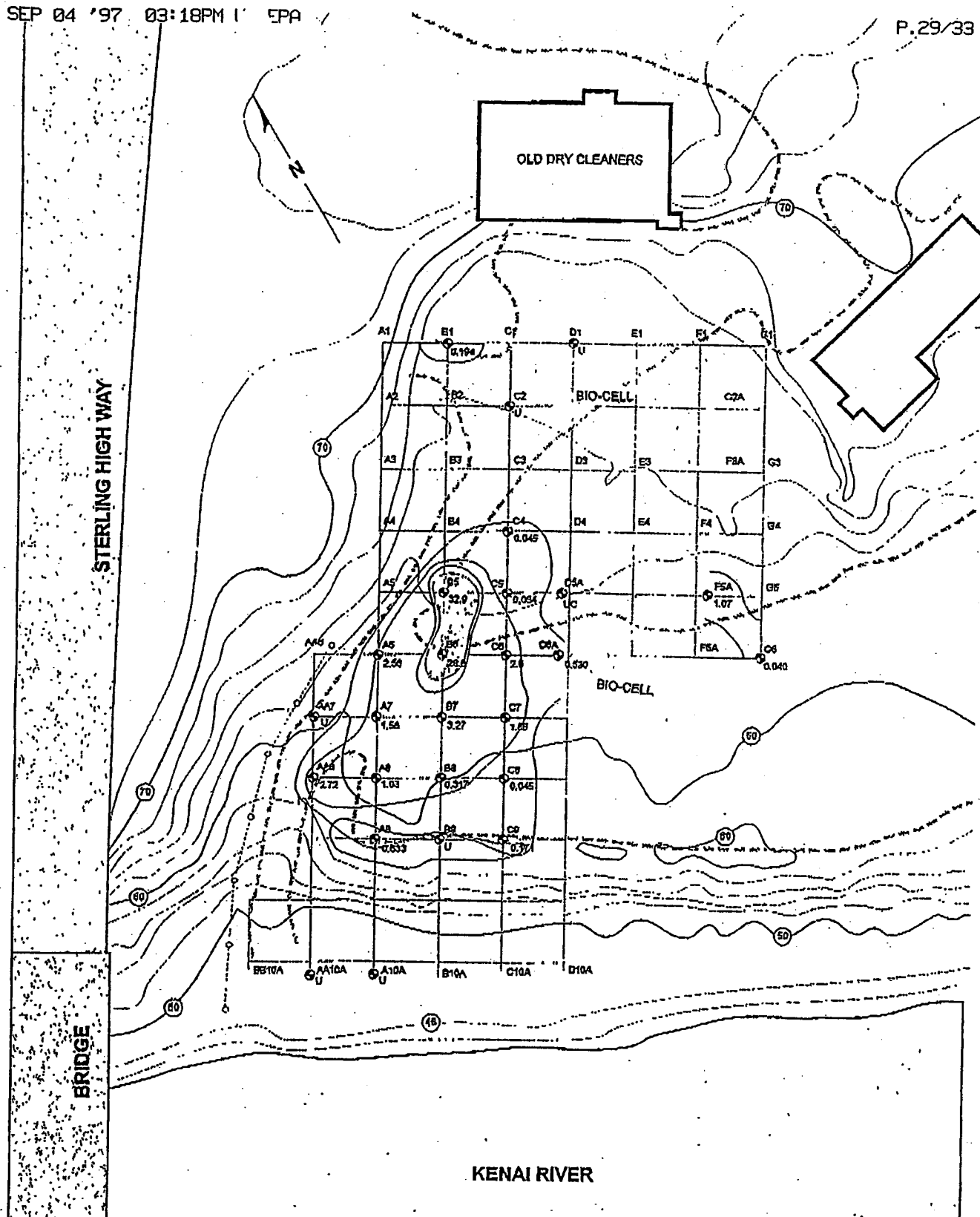
<p>Delineation Map of River Terrace RV Park Located within the SW1/4 section 34, T5N, R10W, S. 1/4, City of Soldotna, Kenai Recording District, Kenai Peninsula Borough, Alaska</p>	<p>Prepared for: Gary Hilde PO Box 322 Soldotna, AK 99609</p> <p>Kennard Environmental Consultants</p>	<p>0 25 50 100 SCALE: 88.36 mm = 100 FT</p> <p>Depth: 5 Foot Lift Type: PCE</p> <p> <input type="checkbox"/> 0.05 ppm or greater <input type="checkbox"/> 1 ppm or greater <input type="checkbox"/> 5 ppm or greater <input type="checkbox"/> 10 ppm or greater </p>	<p>LEGEND</p> <p>U Contaminant was not detected UC Sample could not be collected NA Sample was not analyzed</p> <p> Topography Lines Fence </p>
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NOTES: Above map was recreated from a Topographic Map by Aero Map USA Inc.

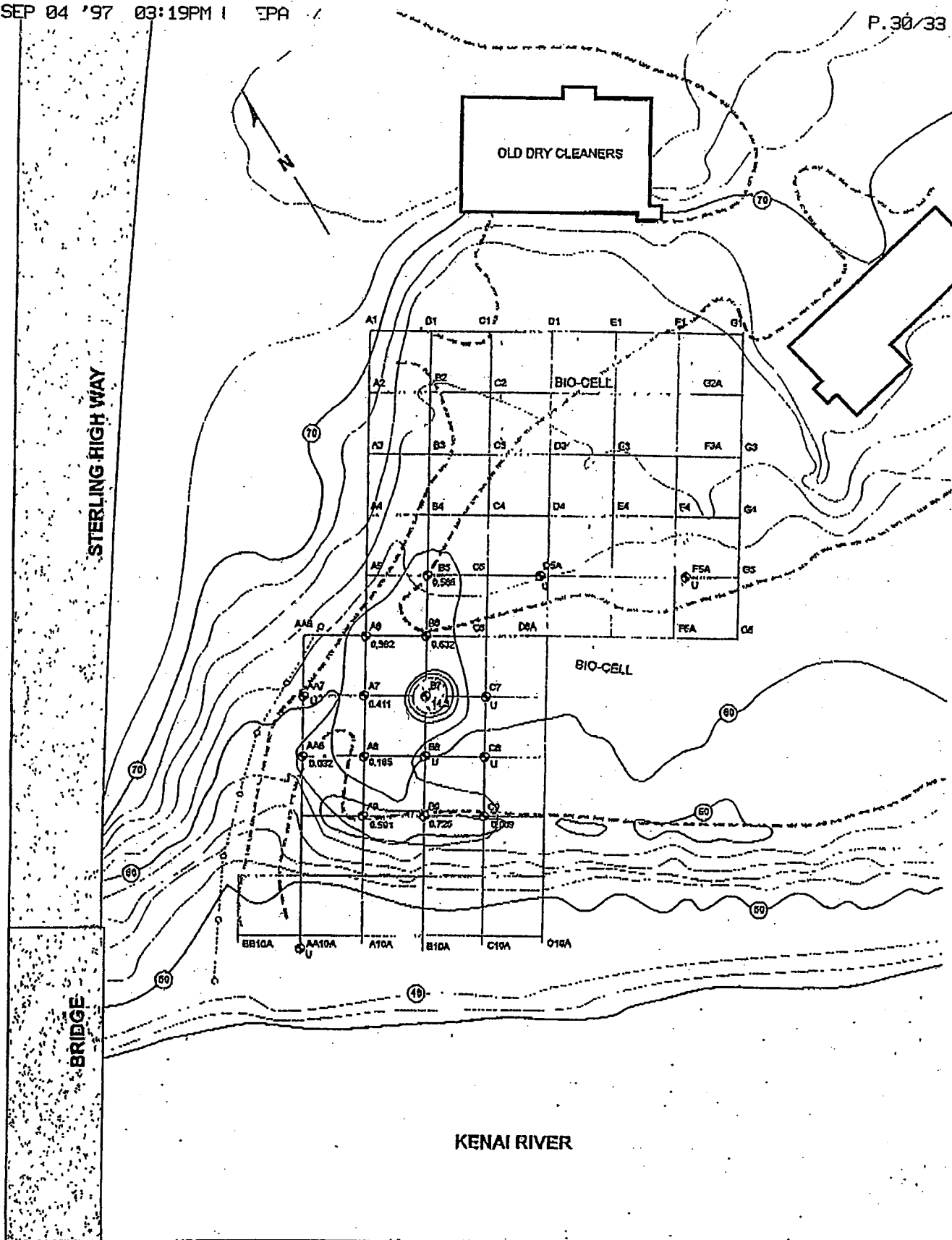


<p>Delineation Map of River Terrace RV Park</p> <p>Located within the grid section 34, T5N, R10W, S. 11, City of Soldotna, Kenai Recording District, Kenai Peninsula Borough, Alaska</p>	<p>Prepared for: Gary Hinkle PO Box 322 Soldotna, AK 99669</p> <p>Kennard Environmental Consultants</p>	<p>0 25' 50' 100'</p> <p>SCALE: 68.36 mm = 100 FT</p> <p>Depth: 10 Foot Lift Type: PCE</p> <p> <input type="checkbox"/> 0.03 ppm or greater <input type="checkbox"/> 1 ppm or greater <input type="checkbox"/> 5 ppm or greater <input type="checkbox"/> 10 ppm or greater </p>	<p>LEGEND</p> <p>U Contaminant was not detected UC Sample could not be collected NA Sample was not analyzed</p> <p> Topography Line Fence </p>
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NOTES: Above map was recreated from a Topographic Map by Aero Map USA Inc.

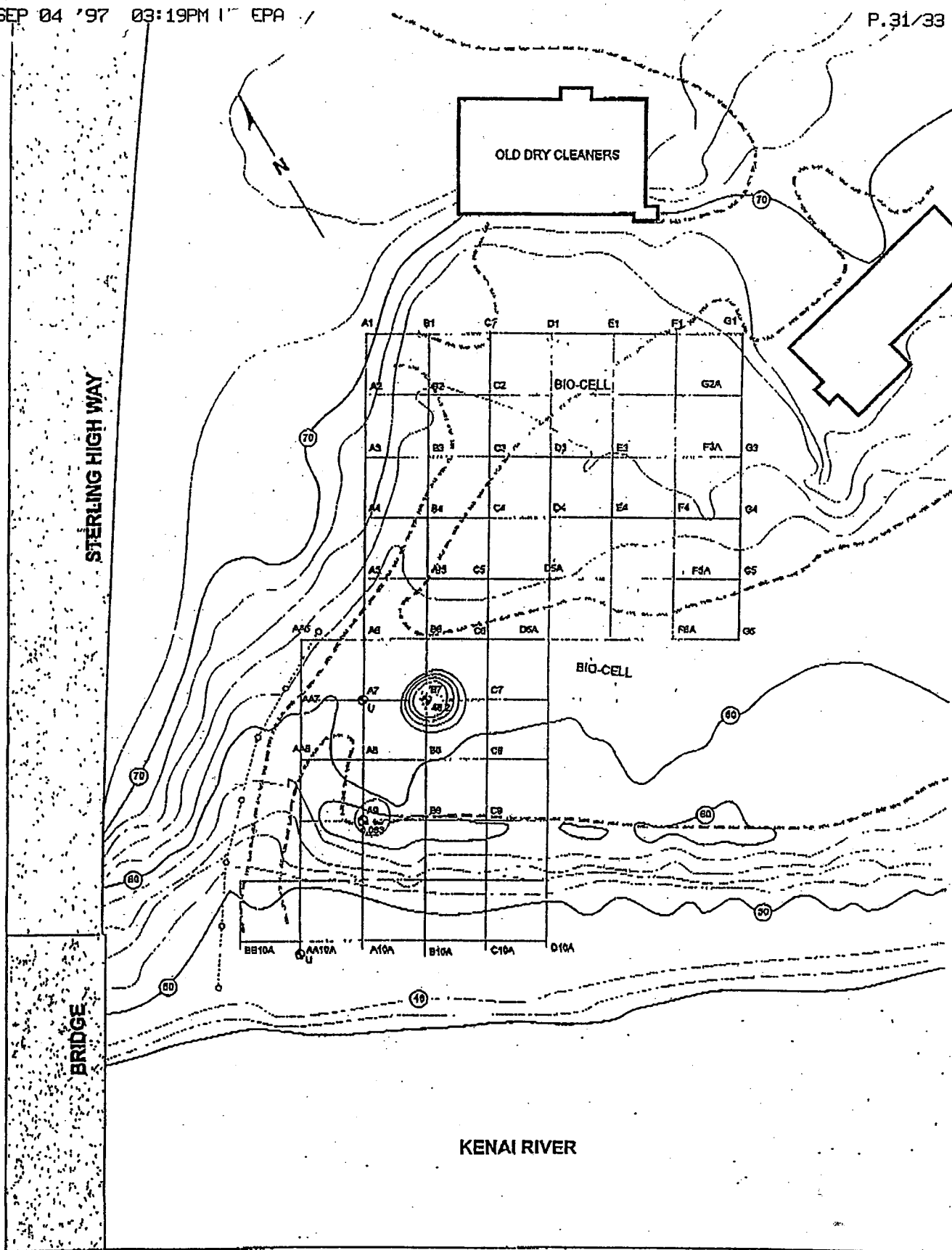


Delineation Map of PCE contaminated soils	Prepared for: Gary Hinkle PO Box 322 Soldotna, AK 99669 By:	SCALE: 88.36 mm = 100 FT	LEGEND
River Terrace RV Park	Kennard Environmental Consultants PO Box 322 Fairbanks, AK 99741 (907) 574-4118	Depth: 15 Foot lift Type: Tetrachloroethylene (See below note (2) for other contaminants and break down percentages of PCE)	U Contaminate was not detected UC Sample could not be collected NA Sample was not analyzed
Located within the SW/4 section 34, T5N, R10W, S. 1/4, City of Soldotna, Kenai Recording District, Kenai Peninsula Borough, Alaska		<input type="checkbox"/> 0.02 ppm or greater <input type="checkbox"/> 1 ppm or greater <input type="checkbox"/> 5 ppm or greater <input type="checkbox"/> 10 ppm or greater	Topography Lines Fence
NOTES: (1) Above map was recreated from a <i>Topographic Map</i> by Aero Map USA Inc. (2) Diesel, Gasoline, Trichloroethene, and cis-1,2-Dichloroethene.			



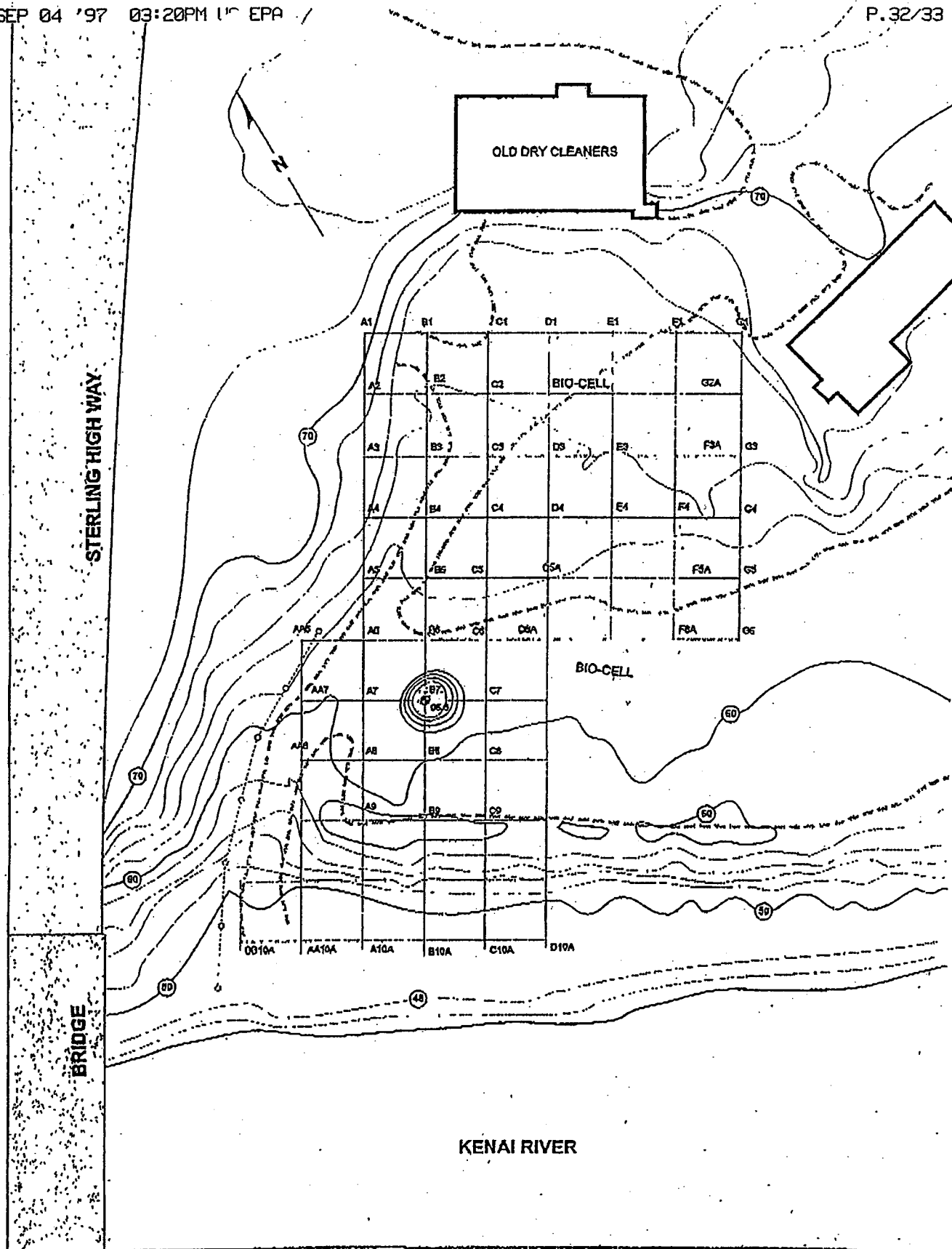
<p>Definition Map of River Terrace RV Park Located within the SW1/4 section 34, T8N, R10W, S. M., City of Eads, Kenai Recording District, Kenai Peninsula Borough, Alaska</p>	<p>Prepared for: Gary Hilde PO Box 322 Eads, AK 99559</p> <p>Kennard Environmental Consultants</p>	<p>0 25 50 100' SCALE: 88.36 mm = 100 FT</p> <p>Depth: 20 Foot Lift Type: PCE</p> <p> <input type="checkbox"/> 0.03 ppm or greater <input type="checkbox"/> 1 ppm or greater <input type="checkbox"/> 5 ppm or greater <input type="checkbox"/> 10 ppm or greater </p>	<p>LEGEND</p> <p> U Concentrate was not detected UC Sample could not be collected NA Sample was not analysed </p> <p> Topography Lines Fence </p>
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NOTES: Above map was recreated from a *Topographic Map* by Aero Map USA Inc.



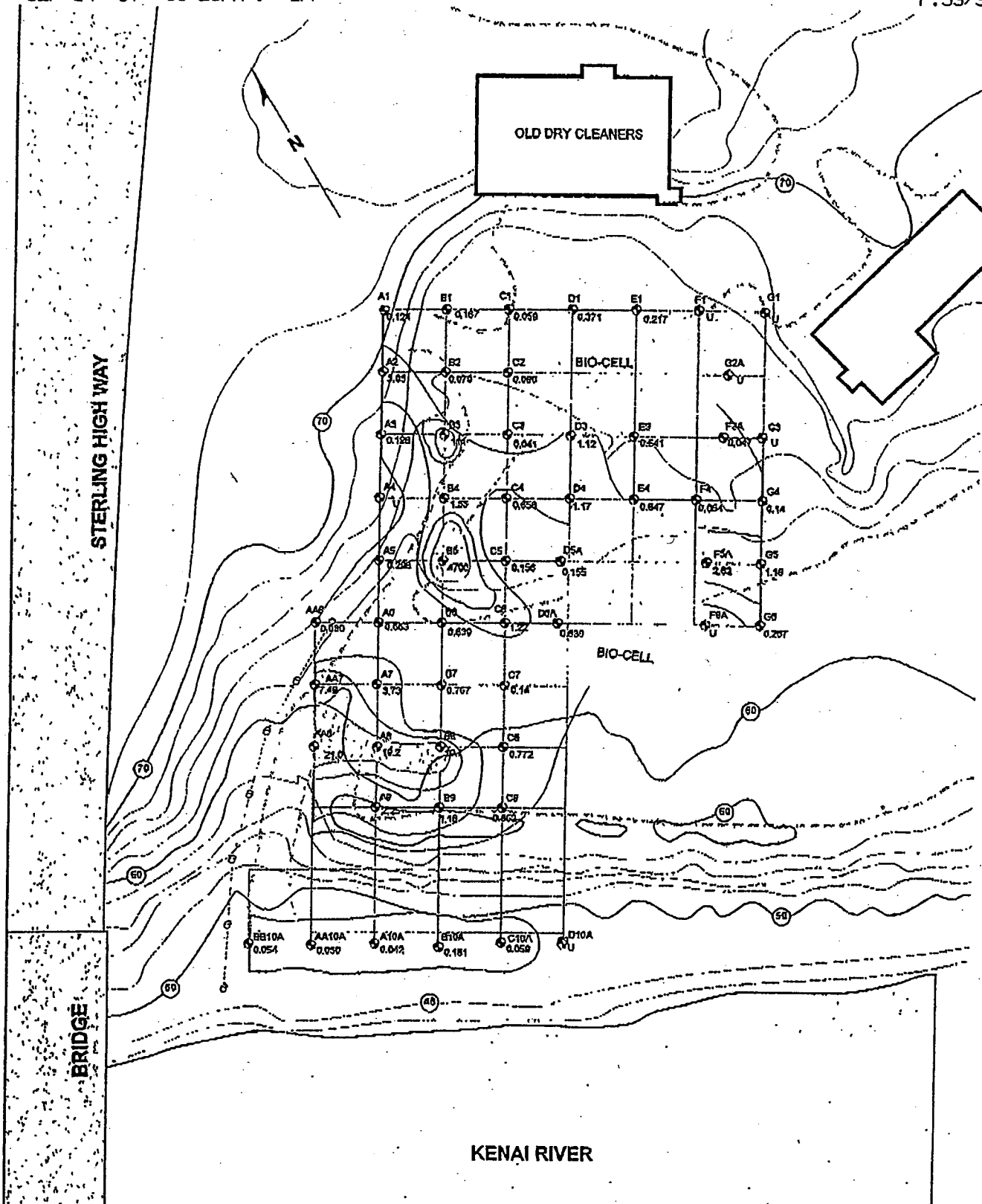
<p>Delineation Map of River Terrace RV Park Located within the 1/4 section 34, T8N, R10W, S. 1/4, City of Soldotna, Kenai Recording District, Kenai Peninsula Borough, Alaska</p>	<p>Prepared for: Gary Hinkle PO Box 322 Soldotna, AK 99601</p> <p>Kennard Environmental Consultants</p>	<p>0 25' 50' 100'</p> <p>SCALE: 88.36 mm = 100 FT</p> <p>Depth: 25 Foot Lift Type: PCE</p> <p> <input type="checkbox"/> 0.03 ppm or greater <input type="checkbox"/> 1 ppm or greater <input type="checkbox"/> 5 ppm or greater <input type="checkbox"/> 10 ppm or greater </p>	<p>LEGEND</p> <p>U Contaminant was not detected UC Sample could not be collected NA Sample was not analyzed</p> <p> Topography Lines Fence </p>
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NOTES: Above map was recreated from a Topographic Map by Aero Map USA Inc.



<p>Definition Map of River Terrace RV Park Located within the SW/4 section 34, T9N, R10W, S. 14, City of Soldotna, Kenai Recording District, Kenai Peninsula Borough, Alaska</p>	<p>Prepared for: Gary Hinkle PO Box 322 Soldotna, AK 99683</p> <p>Kennard Environmental Consultants</p>	<p>0 25 50 100 SCALE: 68.36 mm = 100 FT</p> <p>Depth: 30 Foot Lift Type: PCE</p> <p> <input type="checkbox"/> 0.03 ppm or greater <input type="checkbox"/> 1 ppm or greater <input type="checkbox"/> 5 ppm or greater <input type="checkbox"/> 10 ppm or greater </p>	<p>LEGEND</p> <p> U Concentrate was not detected UC Sample could not be collected NA Sample was not analyzed </p> <p> Topography Lines Fence </p>
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NOTES: Above map was recreated from a Topographic Map by Aero Map USA Inc.



Delineation Map of PCE contaminated soils

River Terrace RV Park

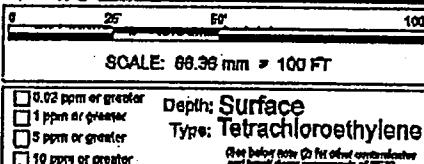
Located within the refuge section 34, T9N, R10W, S. M., City of Soldotna, Kenai Recording District, Kenai Peninsula Borough, Alaska.

Prepared for: Gary Hilden
PO Box 322
Soldotna, AK 99689

By:
Kennard Environmental Consultants

PO Box 253 Palmer, AK 99647

(907) 376-4146



- ☐ 0.02 ppm or greater
- ☐ 1 ppm or greater
- ☐ 5 ppm or greater
- ☐ 10 ppm or greater

LEGEND

- U Contaminant was not detected
- UC Sample could not be collected
- NA Sample was not analyzed

Topography Lines
O--O Fence

NOTES: (1) Above map was recreated from a Topographic Map by Aero Map USA Inc. (2) Diesel, Gasoline, Trichloroethene, and cis-1,2-Dichloroethene.